IN THE HIGH COURT OF JUDICATURE AT BOMBAY

APPELLATE SIDE

CRIMINAL WRIT PETITION NO.716 OF 2004

ALONGWITH

CRIMINAL WRIT PETITION NO. 717 OF 2004

ALONGWITH

CRIMINAL WRIT PETITION NO. 718 OF 2004

SANJAY CHANDRAKANT SHAH ... PETITIONER.

VS.

OIL MILLS (AHMEDNAGAR)& ORS. ... RESPONDENTS.

MS. GAURI GODSE FOR THE PETITIONER.

MR. M.S.KARNIK WITH MR. PANKAJ DAS FOR RESPONDENT NO.1.

MRS. M.M.DESHMUKH APP FOR THE STATE- RESPONDENT NO.2.

Coram : S.K.Shah, J.

Date : June 19, 2006.

P.C.

1. These three petitions are between the same parties and concerned with three different prosecutions arising out of three cheques, raising the same grounds. Therefore, I deal with all of them by common Order.

2. Heard the learned Counsel on both sides. These writ petitions are directed against the Order passed by the Additional Sessions Judge,Pune, dated 30.1.2004, discharging the accused No.5- Respondent No.5 herein.

3. Three different proceedings under Section 138 of the Negotiable Instruments Act were lodged by the Complainant Petitioner against the accused No. 1 firm and all its partners, including the the Respondent No.5 - Accused No. 5.

4. The accused No. 5- Respondent -No.5 had filed an application for recall of the process issued against him, which was rejected by the Magistrate. Against the said Order, he filed three Revision Applications before the Sessions Court, being Criminal Revision Applicatio Nos. 293/2002, 294/2002 and 295/2002. The learned Additional Sessions Judge, Pune allowed the Revisions and passed the Order, discharging the Accused No. 5- Respondent No. 5, which is challenged in these three petitions.

5. The learned Counsel for the Petitioner submits that the only ground on which the accused No.5 -Respondent No.5, had filed an application for

recall/discharge was that the accused No. 5 retired from the said Partnership Firm, two years before the alleged cheques were drawn and, therefore, he was not responsible for the activities and conduct of the business of the Firm, after his retirement. His retirement was registered before the Registrar of the Companies vide deed of his retirement, dated 1.4.1998 and it came to be registered by the Registrar on 5.1.2001.

6. The learned Counsel for the Petitioner therefore, submits that although the date of registration relates back to the date of retirement, the Firm has not issued any notice under Section 32 of the Partnership Act and, therefore, the accused No.5 - The Respondent No..5 herein, was very much liable and responsible for the affairs of the firm and the conduct of the business of the firm, and, therefore, on this count he is responsible for the alleged offence.

7. With regard to the provisions under Section 141 of the Negotiable Instruments Act, the learned Counsel for the Petitioner submits that accused NO.5 - the Respondent No. 5, had not put up the case that he had no knowledge of the issuance of the cheques and its dishonour and, therefore, in her submission, the

provisions of Section 141 of the Negotiable Instruments Act, 1881 do not apply.

8. As against this the learned Counsel for the Respondents submits that the person who at the time of offence was committed, was in charge of, and was responsible to, the company for the conduct of the business of the company, as well as the company, shall be deemed to be guilty of the offence and shall be liable for prosecution. However, the accused No. 5- the Respondent No.5 herein, executed a deed of retirement on 1.4.1998, he cannot be held liable for the subsequent affairs of the Firm.

9. I have gone through the complaint. In the complaint the contentions are made with regard to the partners are as under:-

> "2.1 That the complainant and accused are known to each other. The accused No.1 is Partnership firm and accused No. 2 to 11 are the partners of the accused No.1 firm and looking after the affairs and management of the said firm. The accused requested the Complainant to deposit the amount with the firm i.e. accused No.1 for the business of the said

firm and as per the said request the Complainant deposited the said amount with Accused and against the said amount, the accused had issued below mentioned cheques to the Complainant and Complainants office.

10. It is therefore affirmed in the complaint that the partners of the accused NO.1 Firm are looking after the affairs and management of the said Firm. The learned Counsel for the Respondents submits that there is no averment that the accused No.5 was responsible to the firm in the conduct of the business of the firm. He also submits that since the date of registration of the deed of retirement relates back to the date of execution of the deed of retirement, which is 1.4.1998, therefore, the accused No. 5- the Respondent No.5 was not concerned with the subsequent conduct of the business or the affairs of the firm. In view of that the learned Counsel for the Respondents submits that the learned Additional Sessions Judge has rightly allowed the revision and discharged the accused No.5 - the Respondent No.5.

11. The averments that are made in the complaint, do not mention that the accused No. 5 was responsible for the conduct of the business of the firm. In absence of

these averments together with the fact of retirement of accused No.5 from the partnership firm with effect from 1.4.1998 absolves him from the criminal liability.

12. So far as the provisions of Section 32 of the Indian Partnership Act are concerned, the liability of the accused No.5 does not cease unless a public notice of his retirement is given as per the said provisions. That aspect, however, will be concerning the civil matters and not the criminal liability. Criminal Liability is laid down under provisions of Section 138 and 141 of the Negotiable Instruments Act.

13. Under the circumstances, I do not find any illegality or impropriety committed by the Additional Sessions Judge in discharging the accused No.5. Consequently, I do not find any merit in these three writ petitions. The Writ Petitions, therefore, stand dismissed.

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[S.K.Shah , J.]